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F.#2010R00578

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against - 11-CR-508 (SLT)

MICHAEL VIRTUOSO,
also known as
“Mike the Butcher,”

Defendant.

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THE GOVERNMENT’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S MOTION FOR RELEASE ON BAIL PENDING TRIAL

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PRELIMINARY STATEMENT

The government respectfully submits this memorandum in opposition to the defendant's motion for release on bail pending trial. The defendant – a convicted loanshark and member of the Bonanno organized crime family of La Cosa Nostra (the "Bonanno family") – now seeks to be released on the basis of his contention that, inter alia, his "alleged affiliation with organized crime" and the "unsupported and conclusory" charges against him do not warrant detention. This Court has previously found the defendant to be a danger to the community for purposes of bail. Remarkably, the defendant concedes in his motion that, even while on supervised release, he has continued to make loans and to collect debts on behalf of others – the very same conduct for which he was previously convicted. Moreover, the defendant's analysis improperly places the burden of proof on the government, contrary to clear law that requires, in the context of a violation of the conditions of supervised relief, that the defendant prove, by clear and convincing evidence, that he does not represent a danger to the community or a risk of flight. The defendant fails to meet that burden here, where, to the contrary, the evidence that he represents a danger to the community is clear and convincing. Accordingly, for the reasons set forth below, as well as in the government's letter to the Court dated July 5, 2011, the defendant's motion should be denied.

BACKGROUND

I. The Defendant's Membership in the Bonanno Crime Family

The defendant has been an inducted member of the Bonanno family for close to a decade. The evidence of his membership in this violent criminal enterprise is strong, and consists of: (1) cooperating witness testimony, (2) consensual recordings, (3) the defendant's own sworn statements to this Court, (4) documents seized from the defendant's butcher shop pursuant to a court-authorized search on or about July 1, 2011, and (5) telephone calls intercepted by the government pursuant to a court-authorized wiretap that demonstrate his continued association with members and associates of the Bonanno family, in violation of the conditions of his supervised release.

For example, in the 2006 federal racketeering trial of former Bonanno boss Vincent Basciano, a cooperating witness for the government testified that, in the months prior to Basciano's 2004 arrest, the witness secretly delivered a message from Basciano to Joseph Massino – the then-boss of the Bonanno family who was incarcerated – that Basciano had inducted "Mike the Butcher or Baker" into the criminal enterprise. See United States v. Basciano, Cr. No. 03-929 (NGG), trial transcript at 6800, attached hereto as Exhibit A.

More recently, in Basciano's 2011 trial for murder in-aid-of racketeering, the government introduced consensual recordings of Basciano discussing Virtuoso's induction into the Bonanno family with Massino. In those conversations, Massino indicated that he had initially rejected a proposal by Bonanno captain Joseph Cammarano, Sr., also known as "Joe Saunders" and "Joe C.," to induct Virtuoso into the family, based on Massino's concerns over Virtuoso's drug use. The following is an excerpt from a transcript of those recordings:

> MASSINO: I'm gonna give you a perfect example. Alright, listen to me, Joe Saunders puts in this kid, Mike . . . the butcher.
>
> BASCIANO: Yeah.
>
> MASSINO: I didn't know you then. Maybe six, seven years ago. The guy comes he said chief . . . I grab Joe Saunders, (UI), never in a million I said Joe why don't you listen to me I got it from a good information. This guy uses coke. No. No. No. Listen, what I fuckin' tell you. Don't be so fuckin' stubborn. Go and find out. He goes he asks the kid what you think the kid tells him?
>
> BASCIANO: Just on the weekend.

See Excerpt from 1/3/05 recording, attached hereto as Exhibit B-1. Basciano then explained to Massino, in a conversation four

days later, that he had inducted Virtuoso into the crime family while Massino was in prison, and assigned Virtuoso to Cammarano's crew:

MASSINO: I think you's made sixteen guys since I'm in jail.

BASCIANO: Well, I'm . . .

MASSINO: You's made nine, I think they made six or seven.

BASCIANO: What's happens is I told . . .

MASSINO: Am I right? Who's ya's make?

BASCIANO: . . . I, I made the money. Who, who we make? I gave uh, Joe C, Anthony Pipitone and that uh, uh, Mike.

MASSINO: Oh, Anthony Pipitone to Joe C?

BASCIANO: Yeah, gave him to Joe C.

MASSINO: Does he know anybody there?

BASCIANO: Yeah! He knew people there.

MASSINO: Okay, alright, I'm shocked.

BASCIANO: And, and, and, and Mike the Butcher went to Joe C.

MASSINO: Oh, Mike the Butcher, he belongs there.

See Excerpt from 1/7/05 recording, attached hereto as Exhibit B-2.

In 2008, the defendant acknowledged his membership in the Bonanno family, under oath, as part of his plea of guilt, before this Court, to a superseding information charging him with

conducting the affairs of that enterprise through a pattern of racketeering, including predicate acts of extortionate collection of credit and illegal gambling. See 8/29/07 hearing transcript, United States v. Virtuoso, 06-CR-800 (SLT) (EDNY), at 25-26, attached hereto as Exhibit C.

The defendant's involvement with the affairs of the Bonanno family has continued since his release from prison after serving a sentence of 32 months on those racketeering charges, and while serving a term of supervised release imposed by this Court. During the past 15 months, while investigating the instant extortion charges, government agents intercepted calls pursuant to a court-authorized wiretap in which the defendant spoke with, arranged meetings with, and passed messages to, other members and associates of the Bonanno family. For example, in a call intercepted on or about August 1, 2010, the defendant spoke with Vito Badamo, a convicted felon and inducted member of the Bonanno crime family.[1] The following is an excerpt from that call:

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[1] In August 1995, Badamo was convicted, pursuant to a plea of guilty in the United States District Court for the District of Rhode Island, of possession with intent to distribute cocaine and using and carrying a firearm during and in relation to a drug trafficking offense, and sentenced to 123 months in prison. As noted in the government's Title III application, Badamo at one time reported to Anthony Pipitone, also known as "Little Anthony," a convicted felon and acting captain in the Bonanno family. Notably, the defendant's Rolodex also contained an entry marked "Little Anthony." See Exhibit D, attached hereto.

BADAMO: Hello?

VIRTUOSO: Vito!

BADAMO: Who's this? My man! What time you ready?

VIRTUOSO: Uh, listen to me, I just got a call from my sister saying my mother doesn't feel good.

BADAMO: All right, don't worry about it. We'll go take care of it alone.

VIRTUOSO: I have to brother.

BADAMO: Please, I love you pal. Be safe and I'll talk to you soon. (UI)

VIRTUOSO: We'll talk later, ciao.

See 8/1/10 Call, attached hereto as Exhibit B-3.[2]

In a call intercepted three days later, an individual who identified himself as "Paul" advised the defendant that he had passed a message from the defendant to Vincent Faraci, also known as "Vinny Green" and "Vinny Vegas," a convicted felon and inducted member of the Bonanno family who, like the defendant, was on supervised release at the time, and who had recently relocated to the New York area from Las Vegas:[3]

[2] This excerpt, and the excerpts of calls cited below, are based on draft transcripts and draft translations.

[3] Faraci was convicted in the United States District Court for the District of Nevada in November 1985 of conspiracy to defraud the United States. Faraci was also convicted in the United States District Court for the District of Nevada in March 2008 of conspiracy to defraud the United States.

Paul: Yes, Michael, how are you, buddy? It's Paul.

VIRTUOSO: Hey, Paul. How are you, pal?

Paul: OK. I just wanted to let you know -- I know you don't like to talk too much on the phone -- but I spoke with, uhh, Mr. Vinny Vegas. . .

VIRTUOSO: Excellent.

Paul: . . . and I told him, I gave this number, I told him to have whoever he's got, then, uh, give you a buzz.

VIRTUOSO: Good. Good.

Paul: OK?

VIRTUOSO: Take care, pal.

Paul: Thank you, buddy. Bye.

See 8/4/10 Call, attached hereto as Exhibit B-4. Three days after that, the defendant placed a call to the wife of Paul Spina, a Bonanno soldier, who was incarcerated pending trial on assault in-aid-of racketeering and related charges. See 8/7/10 Call, attached hereto as Exhibit B-5. In the call, Virtuoso inquired whether Spina had received a plea offer from the government and indicated, in referenced to Spina's co-defendants, that he had "heard the other people took something." Id. Virtuoso then requested that Spina's wife "come over here" so that they could "catch up on a few things," adding: "Understand, you know what I'm saying. Please." Id. Virtuoso concluded the

call by asking Spina's wife to "[g]ive him my love please." Id. Spina's wife responded: "I'm going to see him on Thursday and I'll let him know." Id.[4]

On July 1, 2011, agents executing a court-authorized search warrant of Virtuoso's butcher shop seized documents and contact information relating to still other members and associates of organized crime. For example, a slip of paper within one Rolodex contained the handwritten entry "Capo Lucchese" and the names "Johnny Sideburns Cerello" and "Glenn the Wheel Guadagno." See Exhibit E, attached hereto. Both men are convicted felons associated with the Lucchese organized crime family, and John Cerrella, also known as "Johnny Sideburns," is a captain in that family.[5] Other individuals associated with the Bonanno family whose contact information was found in the defendant's files include, inter alia, Vincent Guardino[6] and Vito

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[4] In 2011, Spina was convicted, pursuant to a plea of guilty before the Honorable Nicholas G. Garaufis, of two counts of assault in-aid-of racketeering. In 2008, Spina was convicted, pursuant to a plea of guilty before this Court, of conspiracy to commit murder in-aid-of racketeering. Spina and Virtuoso were co-defendants in the 2008 case.

[5] In June 2003, Cerrella was convicted, pursuant to a plea of guilty in the United States District Court for the Eastern District of New York, of racketeering and witness tampering. In June 2008, Guadagno was convicted, pursuant to a plea of guilty in the United States District Court for the Eastern District of New York, of extortion conspiracy.

[6] The defendant contends, in his brief, that the government "blindly guessed" that Guardino's telephone number, which appeared in toll records cited in the government's Title

Pipitone, both convicted felons.[7] See Exhibit F, attached hereto. The agents also seized a thick file of newspaper clippings concerning the trials of various mob members and associates, including articles documenting the conviction of Basciano, the 2009 deportation of Bonanno family Acting Boss Sal "the Iron Worker" Montagna, the 2009 arrest of Bonanno family members and associates for a violent stabbing, and various articles related to the testimony of cooperating witnesses at the 2009 trial of Genovese captain Michael Coppola.

II. The Defendant's Prior Detention Proceedings and Conviction

As set forth in the government's letter of July 5, 2011, the defendant was previously arrested by agents of the Federal Bureau of Investigation ("FBI") on November 9, 2006, and charged with conspiracy to commit extortionate collection of

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III application, belonged to Guardino. (Def. Br. at 24). In the defendant's address book, however, the number was listed alongside the name "Vinny Guardino," and directly below an entry for "Vito Adamo" that listed the number for Vito Badamo, referenced above.

[7] In August 1993, Guardino was convicted, pursuant to a plea of guilty, in Nassau County Court, of attempted grand larceny, and sentenced to a one-year term of imprisonment. In July 2000, Guardino was convicted, pursuant to a plea of guilty, in the United States District Court for the Eastern District of New York, of Hobbs Act robbery, and sentenced to 46 months' imprisonment. In November 2010, Vito Pipitone was convicted, pursuant to a plea of guilty, in the United States District Court for the Eastern District of New York, of two counts of assault in-aid-of racketeering, and sentenced to 41 months' imprisonment. Vito Pipitone is the brother of Anthony Pipitone, referenced above.

credit. Following an arraignment, the Honorable Roanne L. Mann, United States Magistrate Judge for the Eastern District of New York, rejected the defendant's proposed bail package of $1.7 million, secured by multiple properties and three suretors, and entered a permanent order of detention on the basis that the defendant represented a danger to the community. See United States v. Virtuoso, 06-CR-800 (SLT), Dkt. No. 15. In so doing, Judge Mann found that the government had "established by clear and convincing evidence that the defendant participated in communicating threats to a loanshark victim and in attempting to locate her to carry out those threats." Id.

On December 6, 2006, Virtuoso and two co-conspirators were indicted by a grand jury in the Eastern District of New York on three counts of extortionate extension of credit, extortionate collection of credit, and extortionate collection of credit conspiracy. At the defendant's arraignment on the indictment on December 19, 2006, the Honorable Robert M. Levy granted his revised proposed bail package of up to $5 million, secured by 12 properties, but stayed the order pending the government's appeal. See United States v. Virtuoso, 06-CR-800 (SLT), Dkt. No. 25. On December 21, 2006, this Court reversed Judge Levy's order and entered a permanent order of detention. Id. Dkt No. 31. In rejecting the proposed bail package – which included all of the properties the defendant now proposes to post, as well as four

additional properties – the Court concluded that the government had proved, by clear and convincing evidence, that the defendant was a made member of the Bonanno crime family, that he was a danger to the community, and that pursuant to 18 U.S.C. § 3142(e)(1), there was no condition or combination of conditions that could reasonably assure the safety of any other person and the community. See United States v. Virtuoso, 06-CR-800 (SLT), Dkt. No. 119, at 18-22.[8] The Court relied, in part, on a consensual recording, made by a cooperating witness for the government, in which one of the defendant's co-conspirators repeatedly warned the witness that a debtor would be killed – and made other, implicit threats of harm against the debtor's children – if the debt was not repaid, stating:

> Listen, either they're gettin' paid or she's going in the trunk of a car. Right now she's going in the trunk of a car.

10/19/06 Recording, attached hereto as Exhibit B-6.

In February 2007, the defendant was charged in a superseding indictment with racketeering and racketeering conspiracy, in connection with his membership in and association with the Bonanno family. The charged predicates included extortionate extensions and collections of credit involving five

[8] Having reached that conclusion, the Court concluded that it need not reach the question whether the defendant also represented a risk of flight. United States v. Virtuoso, 06-CR-800 (SLT), Dkt. No. 119, at 18.

separate victims, along with related substantive counts. In August 2008, the defendant was convicted, pursuant to a plea of guilty, to a superseding information charging one count of racketeering. As part of his allocution, the defendant acknowledged his membership in the Bonanno crime family and acknowledged committing the charged predicate acts of extortionate collection of credit from one victim, and illegal gambling. See United States v. Virtuoso, 06-CR-800 (SLT), Dkt. No. 269, at 26. The defendant admitted, with respect to the extortion count, that he "participate[d] in collecting money" from an individual to whom money had been loaned at a "high rate of interest," and stated: "Although I did not threaten him, it was understood that a threat of harm would be used if he did not pay." Id.

The defendant was sentenced to 32 months' imprisonment. He was released from federal custody on March 5, 2009, and is subject to a term of supervised release that is scheduled to terminate on March 4, 2012. The terms of the defendant's supervised release provide, inter alia, that he "shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer," and that he "shall not associate, in person, through mail, electronic mail, or telephone with any individual with an affiliation to any

organized crime groups, gangs, or any other criminal enterprise." Id., Dkt. 442, at 3-4.

III. The Defendant's Multiple Violations of Supervised Release

Since the time of his release from prison, the defendant has violated the conditions of his supervised release in multiple ways, including: (1) committing new crimes, including but not limited to the extortions with which he is now charged, as set forth in Section IV below; (2) associating with and passing messages to members and associates of organized crime, as set forth above in Section I above; and (3) associating with other convicted felons.

For example, the defendant repeatedly spoke by telephone and met with an individual, Angelo Speciale, who was convicted in Italy, in 2004, of group sexual assault, and in 2006, of armed robbery, both felonies. On or about June 29, 2010, FBI agents monitoring the telephone in Virtuoso's butcher shop pursuant to the court-authorized wiretap intercepted a call from Speciale during which Virtuoso, speaking in the Neapolitan dialect of Italian, advised Speciale not to speak at length on the telephone, and Speciale, responding in Italian, made arrangements to meet Virtuoso in person. Virtuoso told Speciale: "Thank you for the call, but I'm telling you, let's not talk

about these things. When you come here, then we'll talk about them. Understand? Don't worry Angelo, as long as you let me know what you're doing. This is important."

Thereafter, Speciale called Virtuoso on or about July 28, 2010. The following is an excerpt of a portion of the conversation, which was conducted in Italian:

VIRTUOSO: What about you? What do you have to tell me?

SPECIALE: Eh, I'm here... working. Always.

VIRTUOSO: You're working?

SPECIALE: Eh.

VIRTUOSO: Ah. Sometimes. I don't want to work either. You know?

SPECIALE: [Laughs]

VIRTUOSO: I'm getting annoyed.

SPECIALE: [Laughs]

VIRTUOSO: I'm telling you the truth. I'm, I'm ... getting annoyed -- not getting annoyed, I am annoyed.

SPECIALE: Eh.

VIRTUOSO: Sometimes I tell myself, "Miche', let's do what we used to do before." But ...

SPECIALE: Ayy!

VIRTUOSO: ... I stop, I stop, we stop ourselves.

SPECIALE: That can't happen.

VIRTUOSO: That can't happen for now. [Laughs]

SPECIALE: As soon as, as soon as the song ends, [UI]

VIRTUOSO: A little while longer.

SPECIALE: Eh, that's it.

VIRTUOSO: A little while longer, a little while longer.

Agents executing the court-authorized search warrant of Virtuoso's butcher shop on or about July 1, 2011, found entries for telephone numbers for Speciale in Virtuoso's Rolodex and his address book. See Exhibit G, attached hereto.

IV. The July 5 Arrest and Current Indictment

On July 5, 2011, the defendant was arrested on a complaint charging him with extortionate collection of credit, in violation of 18 U.S.C. § 894(a), and the use of facilities in interstate commerce to commit larceny by extortion, in violation of 18 U.S.C. § 1952(a)(3)(A) and New York Penal Law § 155.30. On July 13, 2011, the defendant was indicted by a grand jury in the Eastern District of New York on two counts of extortionate collection of credit, in violation of 18 U.S.C. §§ 894(a)(1) and 2. The defendant has also been indicted in the Southern District of New York on a charge of conspiring to distribute and possess with intent to distribute one kilogram or more of heroin, in violation of 21 U.S.C. §§ 812, 841(b)(1)(A) and 846.

The extortion charges arise out of loansharking activity over the last two years, following Virtuoso's release

from prison and during the time he has been on supervised release. The defendant is currently charged with the extortion of two victims, identified in the indictment as John Doe #1 and John Doe #2.

The evidence of the charged crimes is strong and includes: (1) information provided by multiple victims and other witnesses concerning the charged extortions as well as other recent and historical loansharking activity by the defendant; (2) consensual recordings in which members and associates of the Bonanno family discuss Virtuoso's loansharking activity and his role as an inducted member of the crime family; (3) court-authorized wiretaps; (4) proceeds and records of Virtuoso's loansharking activity that were seized from his place of business; and (5) phone records and other documentary evidence establishing the relationship between the defendant and his extortion victims.

For example, an individual who is acquainted with the defendant has informed the government that, following the defendant's release from prison, the defendant made statements admitting that he intended to resume making collections on loanshark loans that he had made prior to his incarceration. Other witnesses have informed the government that the defendant did exactly that with respect to John Doe #1 and John Doe #2. For example, as set forth in the complaint, John Doe #1 has

informed the government, inter alia, that: (1) he obtained a $1,000 loan from the defendant, whom he did not previously know, but whom he knew to be involved in organized crime, approximately one year before the defendant's 2006 arrest; (2) he did not believe the loan to be enforceable by civil judicial process; (3) he made regular cash payments of $50 or $100 to the defendant, in the rear office area of the defendant's butcher shop, either once or twice per month; (4) on one occasion, the defendant directed him to make the payment inside a walk-in freezer located in the rear of the butcher shop; (5) he ceased making regular payments to the defendant at the time of the defendant's 2006 arrest; (6) following the defendant's release from prison in 2009, the defendant contacted him and stated that he continued to owe the defendant money; (7) thereafter, John Doe #1 resumed making payments of $50 or $100 to the defendant, once or twice per month, until December 2010, when he was interviewed by FBI agents.

Other witnesses have confirmed that Virtuoso met privately with John Doe #1 in the rear office area of the butcher shop approximately twice per month for approximately one year prior to Virtuoso's 2006 arrest, and that there is a walk-in freezer in that area, adjacent to Virtuoso's desk. In addition, documentary evidence, including Virtuoso's address book and toll

records, establishes the relationship between the defendant and John Doe #1.

Similarly, John Doe #2[9] has informed the government, inter alia, that: (1) the defendant has a reputation in the community as a loanshark and "not somebody to mess with"; (2) following the defendant's release from prison, the defendant directed John Doe #2 to accompany him to the rear office area of the defendant's butcher shop where the defendant advised John Doe #2 that a debt incurred by another individual had not been paid and indicated that John Doe #2 was responsible for the debt and should pay it "to avoid the aggravation"; and (3) John Doe #2 promised on that occasion, and on subsequent occasions, to make payments on the debt because, among other things, he feared the defendant might kill him. Other evidence, including, inter alia, wiretap recordings, other witnesses, and documents seized from the defendant corroborate the relationships between the defendant, the individual who incurred the debt, and John Doe #2.

In addition to the evidence of the charged extortions proffered above, the government is in possession of substantial additional evidence concerning the extent of the defendant's loansharking activities both prior to his 2006 arrest and following his 2008 release from prison, including information

[9] John Doe #2 has multiple criminal convictions, including convictions for criminal possesson of stolen property and fraud.

provided by cooperating witnesses concerning other usurious loans, and wiretap intercepts in which the defendant repeatedly requested the repayment of debts, or made arrangements to collect money, that he contended was owed to him or to others by various individuals.

For example, Virtuoso made numerous calls to an individual identified in the complaint as Debtor #2, demanding payment of a debt.[10] In a call on our about June 25, 2010, Virtuoso and Debtor #2 had the following exchange:

DEBTOR #2:	Hi Mike. How are you? I'm sorry, I'll be there this morning. As soon as my girl gets here I come down and see you.
VIRTUOSO:	Alright don't forget [UI] this week is going to be 3 bills. So we backing up again. See if we can catch up with them. Alright?
DEBTOR #2:	No it would be 2 bills. No?
VIRTUOSO:	Well, 2 bills and plus this bill of Friday.

[10] The defendant concedes that he collected money from Debtor #2 that Debtor #2 purportedly owed to another individual who, in turn, owed money to the defendant. (Def. Br. at 14-15). The defendant contends, however, that he never explicitly threatened Debtor #2, and that the debts owed by Debtor #2 to the third party, and by the third party to the defendant, were legitimate. (Id. 17-18). As set forth below, even assuming, arguendo, that these contentions are true, they are irrelevant to the question of the defendant's guilt.

DEBTOR #2: Oh alright. Alright.

VIRTUOSO: [UI] 3 bills.

See 6/25/10 Call, attached hereto as Exhibit B-7. On or about July 5, 2010, the defendant called Debtor #2 again. The following is an excerpt from the conversation:

DEBTOR #2: Um, let me come down there, to, let me see what I end up with today. I wanna give you something. Also I want to compare my paper with you. I think you're missing a hundred dollar payment on your paper when I saw it last time.

VIRTUOSO: We have to check that out goomba.

See 7/5/10 Call, attached hereto as Exhibit B-8. On July 25, 2010, Virtuoso called Debtor #2 again and had the following exchange:

VIRTUOSO: This is Michael.

DEBTOR #2: Hi Mike, how are you?

VIRTUOSO: I'm doing fine.

DEBTOR #2: I'll try and see you later, I'm fucked here. My staff didn't show up. So let me see what I can do today, OK?

VIRTUOSO: If you want I could pass by to you . . . .

DEBTOR #2: I didn't even count money yet. I'm like crazy right now. Let me try and call you back.

VIRTUOSO: Goodbye.

See 7/25/10 Call, attached hereto as Exhibit B-9. On July 28, 2010, the defendant called Debtor #2's workplace. Informed that Debtor #2 was not there, the defendant left the following message: "Tell him this is the bakery, Michael. Tell him he's got to call me or I come over there." See 7/28/10 Call, attached hereto as Exhibit B-10 (emphasis added).

Similarly, Virtuoso repeatedly demanded money from an individual identified in the complaint as Debtor #3.[11] The following is an excerpt from a call on June 23, 2010:

DEBTOR #3: Hi Mike, it's me [Debtor #3].

VIRTUOSO: Hey [Debtor #3].

DEBTOR #3: Is it OK with you if I come in tomorrow and get a few things? I just need a couple of things.

VIRTUOSO: [Debtor #3], you have about 450 bucks here, [Debtor #3].

DEBTOR #3: I'm trying Mike, please. I don't know what else to do.

VIRTUOSO: You got 450 dollars here girl.

DEBTOR #3: Yeah but that's separate from the cash that I owe you right?

VIRTUOSO: Yeah, with the 40 and the 50, you owe 90 dollars in cash, you owe 440. How you gonna take care of this mess?

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[11] The defendant concedes that he loaned money to Debtor #3, but contends that the loan was legitimate. (Def. Br. at 18). As set forth below, the defendant's contention, even if true, is irrelevant, as a matter of law, to his guilt.

DEBTOR #3: That's all together right?

VIRTUOSO: All together, yeah.

DEBTOR #3: I'm gonna give you your money, and give you some on the, you know the bill and then finish paying it the next check.

VIRTUOSO: You know honey, I love you, I'll do whatever I gotta do, but I don't want to, you know, you got yourself in trouble here then what, what, then what are we gonna do? What are we playing games?

DEBTOR #3: No, we're not.

VIRTUOSO: Then let's stop playing games. Get yourself together.

DEBTOR #3: I am trying. I'm trying.

VIRTUOSO: Alright, keep on trying a little harder.

See 6/23/10 Call, attached hereto as Exhibit B-11 (emphasis added).

In a call with still another individual, the defendant demanded to know "what happened man?" The individual responded: "I'll give you a call probably the 2nd of the month when I get my check. I've been sick that's why I haven't been calling. I can't even walk." The defendant responded: "Is that what it is?" See 7/26/10 Call, attached hereto as Exhibit B-12.

Documents seized from the defendant's butcher shop in July 2011 further corroborate the ongoing nature of the

defendant's illegal activity, including a ledger book and other papers in which Virtuoso recorded the debts and payments of his victims. For example, although several pages appear to have been torn from the ledger book prior to the search, as noted in the government's July 5 letter, one of the remaining pages is captioned with the name of one of Virtuoso's victims and contains multiple entries labeled "groceries" and "cash," with amounts listed besides each. See Exhibit H, attached hereto. The page appears consistent with Virtuoso's practice, as described by one of his victims, of separately recording the victim's grocery tab and the cash loans the victim obtained from Virtuoso. In addition, as previously noted, the government seized more than $24,000 in cash from the vicinity of the defendant's desk in the rear office area of the butcher shop.

ARGUMENT

I. Applicable Law

The Bail Reform Act empowers federal courts to order a defendant's detention pending trial where the government proves by clear and convincing evidence that the defendant is a danger to the community or, by a preponderance of the evidence, that he represents a risk of flight. See 18 U.S.C. § 3142(e); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995); United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987). However, where, as here, a defendant is charged with violating a condition of supervised release, Fed. R. Crim. P. 32.1(a)(6) provides that "the burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to the community rests with the person." See also United States v. Porter, No. 03-CR-0129 (CPS), 2007 WL 3232502, *5-6 (ordering detention where defendant charged with violating conditions of supervised release failed to prove by clear and convincing evidence that he did not represent a danger to the community) United States v. Blair, No. 06-CR-208A, 2009 WL 3672064, *1 (W.D.N.Y. 2009) ("The defendant bears the burden of proving that he does not pose a risk of flight or a danger to the community.").[12]

[12] The government's July 5 letter relied on the more stringent standard under the Bail Reform Act, but failed to note that the burden of proof shifts to the defendant where the defendant is charged with violating the conditions of supervised release.

The Bail Reform Act lists four factors to be considered in the detention analysis: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g). Evidentiary rules concerning admissibility do not apply at detention hearings and the government is entitled to present evidence by way of proffer, among other means. See 18 U.S.C. § 3142(f)(2); see also Fed. R. Evid. 1101(d)(3); United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (government entitled to proceed by proffer in detention hearings).

II. Analysis

As set forth below, the defendant has utterly failed to meet his burden of proving by clear and convincing evidence that he does not represent a danger to the community or a risk of flight. To the contrary, his admission that, even while on supervised release, he continued to lend money and collect debts – the precise conduct for which he was convicted and incarcerated – underscores the need for detention in this case.

At the same time, the evidence proffered by the government proves, even by the more stringent standard applicable in the absence of violations of supervised release, that the defendant represents both a danger to the community and a risk of

flight. Indeed, the defendant's arguments – including, for example, his contentions that Debtor #2 and Debtor #3, neither of whom is the subject of a charged count, were not extorted, and that the evidence concerning Debtor #1 is based on hearsay – are both factually incorrect and legally irrelevant. Accordingly, the defendant's motion should be denied.

A. The Applicable Factors Favor Detention

All four applicable factors favor detention in this case.

First, the nature and circumstances of the crimes charged are serious and demonstrate the defendant's lack of regard for legal authority. The defendant is charged with two counts of extortionate collection of credit, in violation of 18 U.S.C. § 894(a). That crime is, by definition, a crime of violence, see 18 U.S.C. § 3156(a)(4)(A), and the defendant, if convicted, faces up to 20 years' imprisonment on each charge, in addition to up to two years' incarceration for violating the conditions of his supervised release.[13] Moreover, as noted, both crimes were committed following the defendant's previous conviction for racketeering, including a predicate act of

[13] The significant sentence faced by the defendant gives him a substantial incentive to flee. See United States v. Dodge, 846 F. Supp. 181, 184-85 (D. Conn. 1994) (possibility of a "severe sentence" heightens the risk of flight). The defendant maintains ties to his native Italy and, as a member of organized crime, has resources at his disposal to help him evade law enforcement should he choose to do so.

loansharking. The fact that, immediately upon his release from prison, and while under Court supervision, the defendant resumed the very conduct for which he was previously convicted, demonstrates his brazen defiance for Court orders. This conclusion is further supported by the other violations of supervised release in which the defendant engaged, including, as noted, associating with convicted felons and passing messages to other members and associates of organized crime. His conduct demonstrates that no condition or combination of conditions can assure the safety of the community should he be released. See, e.g., United States v. Gotti, 08-CR-76 (JBW), Dkt. No. 440, at 34 (E.D.N.Y. Mar. 13, 2008) (rejecting proposed $10 million bail package, including home detention and electronic monitoring, citing proffered evidence that defendant was under court supervision when he engaged in charged narcotics dealing and loansharking).

Second, the history and characteristics of the defendant strongly favor detention. The defendant has, as noted, been an inducted member of the Bonanno crime family – a violent criminal enterprise – for close to a decade. In swearing allegiance to that family, he took an oath to put his crime family ahead of his own family, and to commit acts of violence,

including murder, when called upon to do so.[14] He is a recidivist whose criminal record extends nearly three decades, to a 1983 conviction in Kings County Supreme Court for attempted criminal possession of a weapon in the third degree, and who, at his 2008 sentencing, failed to demonstrate any remorse for the harm he had caused his victims. See United States v. Virtuoso, 06-CR-800 (SLT), 8/26/08 Sent. Tr. at 19, attached hereto as Exhibit I. In addition, as noted, the defendant has been indicted in the Southern District of New York on a charge of conspiring to distribute and possess with intent to distribute one kilogram or more of heroin. The defendant's butcher shop – which he describes as a "neighborhood fixture" where he has worked for over 30 years (Def. Br. at 12) – is also a front for his illegal activities where neighborhood residents have been extorted in the meat locker.

Third, the danger posed by the defendant's release is clear and present. In a detention memorandum filed following the

[14] The government does not contend, as the defendant suggests, that the fact of his membership in an organized crime family, without more, requires detention. At the same time, as noted in the government's July 5 letter, organized crime defendants are career criminals who belong to an illegal enterprise, and who thus pose a distinct threat to commit additional crimes if released on bail – as the defendant's own conduct demonstrates. See United States v. Salerno, 631 F. Supp. 1364, 1375 (S.D.N.Y. 1986) (finding that the illegal businesses of organized crime require constant attention and protection, and recognizing a strong incentive on the part of its leadership to continue business as usual).

defendant's 2006 arrest, the government argued that "Virtuoso currently manages and controls a lucrative loansharking operation – one that Virtuoso, if released from custody, is guaranteed to continue running, if for no other reason than to collect through extortionate means the payments due to him from his outstanding usurious loans." United States v. Virtuoso, 06-CR-800 (SLT), Dkt. 9, at 6. Although the defendant was not released at that time, his actions following his release three years later demonstrate the accuracy of the government's prediction. The defendant's victims are afraid of him. One who testified before the grand jury as part of the instant investigation requested that government agents protect the victim's family.[15] Moreover, as an inducted member of the Bonanno crime family with demonstrated ties to high-ranking members of that family and other crime families, Virtuoso has members and associates of organized crime at his disposal to intimidate witnesses or commit violence on his behalf. Accordingly, the defendant's release creates twin dangers: one to the victims and witnesses who have provided or may yet provide evidence against him, and a second to the additional victims and the community that will be harmed by his continued criminality.

[15] The defendant has gratuitously identified, by name, two of the victims described anonymously in the government's complaint. For the reasons set forth below, the government respectfully requests that the Court order that filing withdrawn from ECF and refiled only after the names have been redacted.

Fourth, the evidence of the defendant's guilt is, as set forth above, strong. It consists of the defendant's own admissions, the testimony of numerous victims, witnesses and cooperating witnesses, consensual recordings, wiretap recordings, documents, and the cash proceeds of his illegal activities seized from the very location where witness after witness indicated he loaned them money.[16] Indeed, as noted, the defendant himself concedes that following his release from prison, he made loans and collected debts. With respect to Debtor #1 – who is identified in Count One of the indictment as John Doe #1 – the defendant concedes that the government's proffered evidence establishes two of the required elements of the charged crimes: (1) that he extended credit to John Doe #1, and (2) that he collected payments on that loan. (Def. Br. at 20).

What the defendant does not, because he cannot, concede, is the third element: that the defendant collected and attempted to collect payments from the John Doe #1 using extortionate means. Instead, the defendant contends that the

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[16] The defendant's contention that the more than $24,000 in seized cash represented the legitimate proceeds of his butcher business is absurd. Less than two years earlier, the defendant's attorney told the Court that the business was "on the verge of collapse." United States v. Virtuoso, 06-CR-800 (SLT), Sent. Tr. at 16. Moreover, the money was seized in the pre-opening hours of the Friday before a holiday weekend. It was found, not in the cash register, but in the vicinity of the defendant's desk at the back of the butcher shop, much of it hidden behind a clock on a bookshelf. More than two-thirds of the cash was in hundred dollar or fifty dollar bills.

government has not offered "first hand information" that the defendant "charged interest on the loan" or "threatened [John Doe #1] if payment was not made." (Def. Br. at 20). The defendant's contentions are factually wrong and, in any event, legally irrelevant.[17]

As an initial matter, in order to prove that the defendant used "extortionate means" to collect an extension of credit," the government need not prove that the defendant charged interest on the loan or explicitly threatened John Doe #1. Rather, extortionate means can include implicit threats of "violence or other criminal means to cause harm to the person, reputation, or property of any person." 18 U.S.C. § 891(7). In proving the existence of an implicit threat at trial, "evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means." Id. § 894(b). In addition, where there is evidence that

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[17] The defendant's contention that the government's proffer is based on hearsay is, as set forth below, untrue. It is also irrelevant, insofar as hearsay evidence is admissible at a detention hearing. See, e.g., 18 U.S.C. § 3142(f) ("rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information" at a detention hearing). See also United States v. Abuhamra, 389 F.3d 309, 321 (2d Cir. 2004) ("courts often base detention decisions on hearsay evidence").

the debtor understood the debt to be unenforceable, or that the loan was extended at a usurious rate, the government may, in the Court's discretion, prove the existence of an implicit threat through evidence of the defendant's reputation in the community. Id. § 894(c).

Here, the government has proffered evidence that satisfies all of these elements. For example, the government has proffered evidence that John Doe #1 made regular cash payments of $50 or $100 to the defendant either once or twice per month, both prior to the defendant's incarceration and after the defendant's release. On a $1,000 loan, those amounts correspond to a usurious interest rate of at least 60 percent per year and as much as 250 percent per year.[18] See 18 U.S.C. § 892(b)(2). The government has also proffered evidence that John Doe #1 understood that the loan was not enforceable by civil judicial process; that John Doe #1 understood the defendant to be involved in organized crime; that, in fact, John Doe #1 stopped making

[18] As set forth in the complaint and the government's July 5 letter, after being issued a federal grand jury subpoena, John Doe #1 told a confidential source of the FBI ("CS") that he had told federal agents that the money he borrowed was a personal loan, with no interest – a fact the CS knew to be untrue from a Bonanno soldier acquainted with both John Doe #1 and the defendant. Yet contrary to the defendant's contention, John Doe #1's statement to the CS does not suggest that John Doe #1 actually paid no interest on the loan. Rather, it suggests that John Doe #1 wanted the CS to believe that he had misled federal agents in order to protect the defendant. In fact, John Doe #1 did not tell the agents that the loan was a personal loan at no interest.

payments while the defendant was in prison for loansharking, but resumed making payments after his release; that the defendant directed John Doe #1 to make at least one payment in a walk-in freezer – a fact that the defendant himself concedes creates "an aura of fear" (Def. Br. at 20 n.12); and that the defendant had a reputation in the community as a loanshark who was involved in organized crime. Accordingly, the proffered evidence overwhelmingly proves that the defendant used extortionate means to collect an extension of credit from John Doe #1.

Similarly, with respect to John Doe #2, the government has proffered evidence that the defendant attempted to collect a debt from John Doe #2 that John Doe #2 did not, himself, incur, in order "to avoid the aggravation"; that John Doe #2 knew the defendant to be a loanshark and "not somebody to mess with"; and that John Doe #2 promised to pay the debt because, among other things, he feared the defendant might kill him.

The overwhelming evidence of the defendant's other bad acts and prior extortions set forth above, which the government intends to offer at trial to prove, inter alia, the defendant's motive, intent and knowledge, also support a finding here that the evidence of the defendant's new crimes is very strong. Accordingly, all of the applicable factors counsel in favor of detention.

B. The Defendant's Remaining Contentions Do Not Counsel in Favor of Release

The defendant's remaining arguments for bail are factually inaccurate, legally irrelevant, and do not meet his burden of demonstrating by clear and convincing evidence that he is not a danger to the community and a risk of flight.

First, the defendant's contention that he did not extort Debtor #2 or Debtor #3 is irrelevant, because the defendant is not currently charged with extorting either Debtor #2 or Debtor #3. The defendant's contention is also false. The defendant concedes that he collected a debt from Debtor #2 on behalf of another individual, and that he both extended credit and collected payments from Debtor #3. His contention that those loans were legitimate is, as a legal matter, beside the point. See, e.g., United States v. Zappola, 523 F. Supp. 362, 366 (S.D.N.Y. 1981) ("Extortion consists of the use of wrongful means (force, violence, or fear thereof) to achieve an otherwise proper objective (satisfaction of a legitimate debt); or use of an otherwise proper means (fear of economic loss) to achieve a wrongful objective (obtaining property to which there is no legal entitlement)."). Here, in the context of the defendant's loansharking business and in light of his reputation in the community, the calls between the defendant the two debtors – including his message for Debtor #2 that "he's got to call me or I come over there," and his warning

to Debtor #3 that she had gotten herself "in trouble" and had better "stop playing games" – represent implicit threats and evidence of extortion.[19]

Second, the defendant's lengthy discussion of the purported weaknesses in the government's Title III affidavits is improper in the context of a bail proceeding and irrelevant to the question whether he represents a danger to the community. The government is prepared to litigate the legality of the wiretap, which was twice authorized by a senior judge in this district, should the defendant bring a motion to suppress. Cf. United States v. Petrizzo, No. 93-CR-1366, 1995 WL 129185, at *1 (E.D.N.Y. March 13, 1995) (denying bail motion and noting that government's purported failure to comply with wiretap disclosure requirements, "while pertinent to the suppression motion, is not a reason for releasing the defendant").

Third, the defendant's contention that the government's failure to arrest him earlier suggests that he is not a danger to the community is untrue. The government arrested the defendant within days of the court-authorized search of his business that yielded extensive evidence of his criminality. As set forth above, the evidence that the defendant is a danger to the

[19] The defendant's contention that the government's failure to indict him with respect to this conduct represents some sort of concession of legality is both untrue and irrelevant to the question of detention.

community is clear and convincing, and the defendant has failed to meet his burden of providing clear and convincing evidence to the contrary.

Similarly, the defendant's contention that the government's effort to detain him is punishment for his failure to cooperate is false and does not, in any event, outweigh the overwhelming evidence, and criminal history, warranting an order of detention from this Court.

Fourth, the defendant's reference to the decision of a judge in the Southern District of New York to grant him bail in a different case on different evidence is irrelevant. As Judge Pauley noted in that case: "I make no determination whatsoever about the matters that are pending across the river in the Eastern District. I trust that Judge Townes will make whatever determination she deems appropriate. . . . [T]he bail package that I fixed is the bail package that I believe is appropriate in this case before me and not any other case." United States v. Virtuoso, 11-CR-546 (WHP) (S.D.N.Y. Sep. 16, 2011), at 18, attached hereto as Exhibit J.

C. The Defendant's Motion Should Be Removed From ECF

As noted, the defendant's motion identifies by name the two individuals who were identified by the government in the original complaint as Debtor #2 and Debtor #3. The government respectfully requests, pursuant to Fed. R. Crim. P. 49.1(e), that

the Court order the motion removed from ECF and refiled only after those names have been redacted.

The government is concerned that the public identification of these victims at this stage of the proceedings is unnecessary and may represent a threat to their personal safety. More broadly, the government is concerned that the public identification of the defendant's victims may be construed as an implicit threat about the consequences of cooperating with the government or testifying against the defendant. See, e.g., United States v. Khan, 538 F. Supp. 2d 929, 935 (E.D.N.Y. 2007) (noting that "the mere mention of the names of any potential or possible witnesses may compromise their safety and the safety of their family and friends, as well as chill the desire or willingness of these individuals-or of other possible witnesses-to testify"); cf. United States v. Basciano, 03-CR-929, 05-CR-060 (NGG), 2007 WL 4555892, *4 (E.D.N.Y. Dec. 19 2007) ("The decision to disclose the identities of Government witnesses is within the court's discretion, and public dissemination of the identity of a cooperating witness could endanger the witness's safety.") (citations omitted); United States v. Kelly, 07-CR-374 (SJ), 2008 WL 5068820, at *2 (E.D.N.Y. July 10, 2008) (prohibiting public disclosure of names or identifying information of alleged victim and government witnesses). Indeed, the Second Circuit has noted that pretrial "concealment of the

identity of government witnesses," even from the defendant, is often appropriate in light of the fact that "intimidation of witnesses and subornation of perjury are not unknown, nor, for that matter, is actual injury to witnesses." United States v. Cannone, 528 F.2d 296, 301 (2d Cir. 1975) (citation omitted).

CONCLUSION

For the foregoing reasons, the government respectfully requests that the defendant's motion for release on bail pending trial be denied. The government further requests that the Court direct the Clerk of the Court to remove the defendant's motion from ECF and order defense counsel to refile the motion only after the victims' names have been redacted.

Dated: Brooklyn, New York
September 27, 2011

Respectfully submitted,
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